

Angeles is carried over six cable systems to nearly 100,000 households in the Bakersfield area, it has the arrogance to insist that it be the only educational television source in the area, despite knowing that its actions have, for the past several years, prevented over-the-air service to many non-cable homes. CTSC has done this despite the fact that CTSC's own Articles of Incorporation limit its operations and activities to the geographical area of "Southern California" and the Greater Los Angeles area, and that expansion into the Bakersfield community, located not in "Southern California," but in the San Joaquin Valley part of the Great Central Valley, would violate CTSC's own corporate purposes.

In addition to its above-captioned application, Valley has over the past five years had applications for TV translators to operate on Channels 36 (File No. BPTT-JC0624QF) and 65 (File No. BPTT-8912084Q), in the Bakersfield area.

Soon after Valley filed its original application for a TV Translator on Channel 36 in Bakersfield, CTSC filed its own application for a satellite station to serve the same area on Channel *39 (BPET-881012KE). In furtherance of its interest in expanding local educational television service in the Great Central Valley, and because a grant of CTSC's application would force any operation of Valley on Channel 36 off the air, Valley also applied for authority to operate on Channel *39 (BPET-881230KG). Those initial applications by CTSC and Valley were subsequently returned due to the freeze on television station

applications imposed under the Commission's Advanced Television Systems Freeze Order. CTSC petitioned the Commission on September 11, 1989, to reconsider its decision denying a waiver request of the ATV freeze on Channel *39, which the Commission granted on July 25, 1990. CTSC's reinstated application was subsequently accepted for filing and placed on a cut-off list for the filing of conflicting or competing application. Valley refiled its application for Channel *39 during that window period (BPET-900904KF).

After Valley's Channel *39 application was also accepted for filing, CTSC filed a "Petition to Deny or Dismiss"⁶ which contained literally no reasonable basis in fact or law. However, Valley was forced to respond to each allegation, virtually guaranteeing that its application would be mired in paperwork and that Valley would be required to expend precious resources to defend its application. Predictably, CTSC filed a lengthy reply to Valley's responses which merely reiterated CTSC's baseless arguments. In addition, an amendment filed by Valley under the Commission's rules requiring applicants to keep the Commission informed of significant changes in pending application was similarly challenged by CTSC. See Opposition filed by CTSC on December 5, 1991 in BPET-900904KF.

⁶In contrast, Valley did not oppose CTSC's application for Channel *39 or its Petition for Reconsideration in that proceeding.

Most recently, on November 5, 1992, the Mass Media Bureau released its Notice of Proposed Rule Making (NPRM) in MM Docket No. 92-246, DA 92-1390 (released November 5, 1992). This proceeding was initiated at the request of Valley so that Valley could resolve its short-spacing to the reference coordinates for the allotment for Channel *25 at Ridgecrest, California, an isolated community located in the desert area of eastern California.⁷ NPRM, slip op. at 1 ¶1. In the NPRM, the Bureau noted, as had Valley, that there has been no interest expressed in Channel *25 at Ridgecrest in the 25 years since it was allotted. Id. at ¶2. Notwithstanding the above, CTSC filed comments in MM Docket No. 92-246 opposing the proposal that was put forth in the NPRM at the request of Valley. CTSC's only interest in the Ridgecrest proceeding was to block Valley's efforts in the instant proceeding.

CTSC's attempts to use the Commission's processes to delay action on Valley's applications are also evident in the Channel 65 proceeding. Valley filed an application for a TV translator station for that Channel on December 8, 1989 (BPET-8912084Q). On June 25, 1990, Valley filed a minor amendment to that application to specify a "plus" offset so as to avoid interference with an application filed by White Sage Broadcasting, Inc. ("White Sage),

⁷Because its originally proposed transmitter site was so superior to any other site Valley located, Valley had been attempting to get the Ridgecrest allocation changed for quite some time. Such a change had been proposed by the Commission in MM Docket No. 85-390.

for a low power television station in San Fernando (BPTTL-8912083Y). Nevertheless, and completely ignoring Valley's amendment, CTSC filed a "Petition to Deny" and later an "Addendum to Petition to Deny," arguing vociferously that Valley's application was mutually exclusive to the White Sage application.

Although Valley timely responded to the frivolous and erroneous allegations of CTSC, once again the damage was done. In yet another effort to mire the proceeding, CTSC, admitting no Commission rule existed to allow it to reply to Valley's response, nevertheless filed such a reply with the high-handed explanation that the reply was meant to address "new matter" raised by Valley. Yet it is painfully clear from reading that reply that it was not designed to address anything new. Instead, the 25 page so-called "reply" contained arguments attempting primarily to refute Valley's response to CTSC's Petition. See Reply filed by CTSC on October 19, 1990 in BPTT-8912084Q, official notice requested.

Notwithstanding its Petition to Deny against Valley's application for Channel 65, on May 3, 1991, CTSC filed an application for a new TV translator on Channel 67 at Bakersfield. Once again, CTSC's actions were squarely at odds with statements it made to the Commission in opposition to Valley. In its Petition to Deny filed against Valley's application for Channel 65, CTSC stated:

[I]t should be noted that [Valley] presently has pending two applications to provide precisely the same service to Bakersfield --

this application for Channel 65 and its 1988 application for Channel 36. While the Commission's multiple ownership rules do not apply to noncommercial applicants and Section 73.3520 of the Commission's rules prohibiting multiple applications does not apply to the television translator services, [Valley] should not be allowed to hog frequencies in this manner when a single program service is being proposed. At a minimum, [Valley] should be required to select which of the two translator applications it wishes to pursue so that the other channel can be used by other applicants for low power facilities, either in Bakersfield or in neighboring communities.

See Petition to Deny filed by CTSC in BPTT-8912084Q (filed September 14, 1990 (emphasis added, official notice requested). At the time CTSC filed for Channel 67, it too had an application pending for another translator station to serve the Bakersfield area (Channel 36).⁸ Thus, CTSC's statement, quoted above, is completely at odds with CTSC's filing on Channel 67 and further demonstrates CTSC's bad faith in raising allegations which have no basis in fact to law and which were clearly intended to delay the processing of Valley's applications.

In its Report, Order and Policy Statement in General Docket 81-500, the Commission stated with regard to abuse of process that "such misconduct as the filing of strike applications and the harassment of opposing parties, which threatens the integrity of the Commission's licensing processes, will also continue to be considered as bearing on character." See Policy Regarding

⁸CTSC was also being carried on six cable systems serving some 100,000 homes in the Bakersfield area.

Character Qualifications in Broadcast Licensing, 102 F.C.C. 2d 1179, 1211 (1986). In Grenco, Inc., 28 F.C.C. 2d 166 (1971), the Commission articulated the elements of a "strike" application which would be considered an abuse of process. The Commission stated:

[T]o be considered a "strike" application, the motive or purpose -- principal or incidental -- must be to obstruct or delay another application. Such action by an existing licensee is not in the public interest and would bring into question the qualifications of the applicant to be a licensee. Guidelines used in determining if an application is a "strike" application are as follows: (1) the timing of the application, (2) the economic and competitive benefit occurring from the application, (3) the good faith of the applicant, and (4) questions concerning a frequency study.... The guidelines are just that, and each particular set of circumstances must be individually examined, since the matter of purpose or motive cannot be scientifically defined.

Id. at 167.

Similar to its policy on strike applications, the Commission has said that in its policy on strike petitions, i.e., where a licensee petitions to deny the application of a competitor or potential competitor, "the crucial consideration is whether the petition to deny was filed for the primary and substantial purpose of delay." See Radio Carrollton, 69 F.C.C. 2d 1139, 1150 (1978). In determining this dilatory purpose, the Commission will consider the following factors: (1) statements by the licensee's principals or officers admitting the obstructive purpose; (2) withholding information relevant to disposition of

the requested issues; (3) the absence of any reasonable basis for the adverse allegations in the petition; (4) economic motivation indicating a delaying purpose; and (5) other conduct of the licensee. Id. at 1151.

In the instant case, the record amply demonstrates the history of CTSC's bad faith and harassment of Valley, the only rational explanation of which is to achieve delay. At great expense, Valley submitted three separate proposals to the Commission to bring free public educational television to the Bakersfield area. Each and every time, CTSC used its considerable financial resource to "bury" Valley in paperwork and to delay Commission action.⁹ Applying the Commission's factors for determining abuse of process, it is clear that CTSC's application for a television translator station on Channel 36 in Bakersfield and its various petitions to deny Valley's other applications are "strike" applications and pleadings filed to impede Valley and to delay the provision of free noncommercial educational television by Valley in the Bakersfield area.

That the untimely and improper filing of CTSC's Channel 36 application was purposefully timed to interfere with and delay action on Valley's own application for Channel 36 is not open to doubt. The fact that CTSC so blatantly violated the Commission's processing rules and contradicted its own arguments alleged in

⁹Unlike CTSC, which is licensed to the Southern California metropolis of Los Angeles, Valley must depend on the relatively small population in the Central Valley for its support.

support of its petition to deny Valley's cut-off application for Channel 36 demonstrates its dilatory and disruptive purpose. Its frivolousness can be seen from the fact that its application was summarily dismissed by the Commission, albeit after a delay of over two years. Unfortunately, CTSC successfully obtained the economic and competitive benefit it sought from the intended delay in the processing of Valley's application.

Even under the Commission's standard for judging "strike" petitions to deny, it is clear from the record that CTSC's numerous petitions against Valley constitute an abuse of process which reflect upon its character and fitness to be a licensee. While statements admitting to an obstructive purpose are nearly impossible to obtain in a non-hearing situation, the sheer number of petitions filed against Valley alone speaks volumes about the bad faith of CTSC.

Finally, CTSC's economic motive in filing each of these strike pleadings is clearly shown by CTSC's own statements to the Commission. In its Petition to Deny Valley's application for Channel 65, CTSC stated:

"for the past twenty years, [CTSC] has provided public television service to the Bakersfield, California area by virtue of the carriage of the signal by cable television systems. According to its records, KCET is carried by six cable systems serving some 100,000 households in the Bakersfield DMA. CTSC obtains substantial support from that audience, with approximately 3,700 members in the Bakersfield community who contribute to its operations."

proceedings. See, e.g., California State University Long Beach Foundation, DA 91-1195 (released October 7, 1991), 56 Fed. Reg. 51,225 (October 10, 1991) (comparative renewal); Bible Broadcasting Network, Inc., DA91-1206 (released October 8, 1991) (comparative proceeding, all applicants for new facilities). There have been far fewer comparative proceedings involving reserved television channels, and share-time issues have not been routinely specified in the designation orders in those proceedings. However, a share-time arrangement was ordered in at least one noncommercial television proceeding. See San Antonio Educational Television, Inc., FCC 85D-24 (A.L.J. Tierney, released April 10, 1985). Thus, there is no reason not to consider a share-time arrangement in this proceeding. Indeed, the Order Prior to Prehearing Conference, FCC 93M-150 (released April 9, 1993), in this proceeding directs counsel for the applicants to confer on possible agreement on share-time arrangements.

The instant proceeding is unique. Both applicants for the noncommercial television authorization in Bakersfield are licensees of existing noncommercial television stations in other communities that propose to operate their Bakersfield station as a satellite or semi-satellite of their existing stations. Thus, it would seem that a share-time arrangement might well present an ideal option for resolution of this proceeding. If, notwithstanding evidence adduced pursuant to the issues requested above, CTSC is found to be qualified, and a clear distinction

between the parties cannot be made, a share-time arrangement between Valley and CTSC would certainly afford the residents of Bakersfield with greater program diversity than would a grant of CTSC's application alone. As Judge Tierney noted in the San Antonio Initial Decision, at ¶115, "where both proposals are meritorious" it seems "that the public would be well served by the program offerings of both."

Thus, the issues should be enlarged to determine whether the most effective and efficient use of the channel at Bakersfield would be a share-time arrangement between Valley and CTSC, if both applicants are found to be otherwise fully qualified.

VI. CONCLUSION

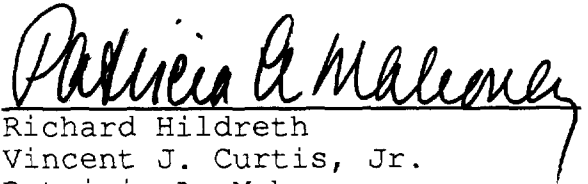
As the foregoing demonstrates, serious questions exist as to the eligibility of CTSC to be the licensee of a new noncommercial television station in Bakersfield. These question should be explored through issues specified in this proceeding.

Also, a share-time issue should be specified, for the reasons stated above.

WHEREFORE, the premises considered, it is respectfully requested that the issues in this proceeding be enlarged, as requested above.

Respectfully submitted,

VALLEY PUBLIC TELEVISION, INC.

By: 
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ATTACHMENT 1

Attachment No. 1

Comes now Valley Public Television, Inc. ("Valley"), by its attorneys, pursuant to Section 1.229(e) of the Commission's Rules, and lists those documents that it would request from Community TV of Southern California ("CTSC") upon the grant of the Motion to Enlarge Issues being filed simultaneously herewith:

other materials which contain information responsive to or relating to the matters described hereinafter.

(d) "Application" or "CTSC's Application" means, unless otherwise indicated herein, CTSC's application for a new noncommercial educational TV station to operate on Channel *39 at Bakersfield, California (BPET-881012KE), and all exhibits and amendments thereto.

(e) "Station" means, unless otherwise indicated herein, the proposed station that CTSC will construct and operate on Channel *39 at Bakersfield, California, if its Application is granted.

Instructions

1. If documents are not readily available in form suitable for copying and inspection (e.g., information that exists on a work processor or computer-stored information), CTSC shall, in advance of the date of production, inform Valley's counsel of that fact and a suitable method of examining and/or copying will be arranged.

2. All documents in the possession, custody, or control of CTSC or any of its Principals which are responsible to or relate to the descriptions set forth hereinafter are to be produced. "Control" means that CTSC or any of its Principals or agents or employees either has the documents or the right to obtain the documents from the person or entity currently having possession.

3. In the event that any document responsive to or related to the descriptions herein is known to CTSC or any of its Principals or agents to have existed but no longer exists, or to

have been in the possession or control of CTSC or its Principals or Agents but is not now in their control, identify any such document and:

(a) state the last known date for existence or of CTSC's or its Principal's or Agent's possession or control;

(b) identify the person or entity having possession or custody on the last known date of possession, custody or control by CTSC or its Principals or Agents;

(c) state the length of any such document;

(d) state the reason(s) why the document was destroyed, no longer exists, or no longer is in the possession, custody or control of CTSC or its Principals or Agents;

(e) describe the contents of any such document; and

(f) for those documents which still exist, identify the person(s) or entity(ies) which today have possession, custody or control.

4. In reading and interpreting the requests for documents set forth hereinafter, CTSC and its Principals and Agents are to give words their normal meanings and to assume the normal breadth of interpretation and definition rather than applying narrow, technical definitions.

5. If CTSC or any one of its Principals or Agents asserts a claim of privilege, the document for which the claim is made is to be sufficiently identified, stating the nature, topic, length, date of and persons involved in each such document (including the author, the person to whom the document was addressed or

directed, and all persons who were indicated to receive a copy), so as to allow the claim to be challenged, should Valley determine to do so.

6. If any document responsive to or related to the descriptions set forth hereinafter, which would have been

concerning the organization, structure, ownership, purposes, goals, or control of CTSC;

(c) all documents concerning ventures and activities of CTSC other than the prosecution of its Application since July 1, 1987; and

(d) minutes of all meetings of CTSC, formal and informal, since July 1, 1987, at which the Application and/or proposed Station or any filing of CTSC or Valley before the FCC were discussed, mentioned, referred to, and/or prepared.

Request No. 3

All documents creating, embodying, affecting, memorializing, representing, authorizing or referencing the future structure, management, operation and/or control of CTSC including but not limited to any plans or proposals to create new positions, boards, committees, or other structures in connection with CTSC's Station at Bakersfield and any conversations or discussions concerning any such plans or proposals.

Request No. 4

All documents that describe, discuss, reference, memorialize, or embody any plan, proposal or discussion concerning or relating to the management and operations of CTSC's

1.

and descriptions of programs to be broadcast, instructional courses to be offered, foreign language programs to be offered, and faculty to be employed.

Request No. 6

All documents that refer to, describe, discuss, or reference any meeting, formal or informal, with any party or person, at which a Principal or Agent of the Applicant discussed, demonstrated, distributed information about or in any way communicated information about or concerning the planning and preparation of the Application, CTSC's programming; and/or the method or means of implementing Applicant's plans.

Request No. 7

All documents that reflect, identify, or describe the persons who were/are responsible for or participated in preparing CTSC's application, arranging its financing, obtaining its transmitter site, publishing its required public notices, establishing the local public inspection file, and retaining lawyers, engineers, and other professionals.

Request No. 8

All documents that reference, describe, report, and/or reflect the membership, control, and activities of CTSC including but not limited to:

- (a) all annual or other regular reports of CTSC, including annual financial statements;
- (b) all membership directories or rosters (July 1, 1987, to present);
- (c) lists of contributors to CTSC (may be limited to donors who contributed \$100.00 or more in any fiscal year);

(d) copies of all direct mail solicitations, brochures, funding proposals, and other documents that describe the activities, goals, and/or purposes of CTSC;

(e) any other documents that reflect or refer to the educational or cultural purposes and activities of CTSC.

Request No. 9

Resumes of all Principals of CTSC.

Request No. 10

All documents identifying each Principal of CTSC as to that Principal's involvement or association with business, professional, social, educational, cultural, or civic organizations located in Bakersfield.

Request No. 11

All documents, including but not limited to, minutes of CTSC's board meetings, as well as engineering reports and/or analyses, which discuss various petitions and filings by CTSC against or in competition with filings of Valley before the FCC.

B. Depositions

In addition to those Principals of CTSC that will be deposed under the standard comparative issue as that term relates to noncommercial comparative hearings, Valley will seek to depose those Principals of CTSC and such other persons that may be shown in the documents produced to have knowledge of relevant facts that appear to be reasonably calculated to lead to the discovery of admissible evidence.

ATTACHMENT 2

☐ Yes

☐ No

If "Yes", state below the name of such other legal entity, and state how such control, if any, exists and the extent thereof.

9. Give the following information as to applicant's officers, members of governing board, and holders of 1% or more ownership interest (if any).

Name and Residence	Office Held	Citizenship	Principal Profession or Occupation	By whom appointed or elected

10. ~~Television applicants which are nonprofit organizations rather than governmental bodies or educational institutions attach as Exhibit No. _____ evidence that officers, directors, and members of the governing board are broadly representative of the educational, cultural, and civic groups in the community. This does not apply if applicant is applying for change in facilities.~~

ATTACHMENT 3

Section II - LEGAL QUALIFICATIONS

Name of Applicant _____

1. Applicant is: *(Check one box below)*

- ☐ (a) governmental or public educational agency, board or institution
- ☐ (b) private nonprofit educational institution
- ☐ (c) Other *(specify)* _____

2. For applicants 1(c) only, describe in an Exhibit the nature and educational purposes of the applicant.

Exhibit No. _____

3. For applicants 1(c) applying for a new noncommercial educational television station only, describe in an Exhibit how the applicant's officers, directors and members of its governing board are broadly representative of the educational, cultural and civic segments of the principal community to be served.

Exhibit No. _____

4. Describe in an Exhibit how the proposed station will be used, in accordance with 47 C.F.R. Section 73.503 or Section 73.621, for the advancement of an educational program.

Exhibit No. _____

5. Is there any provision contained in any by-laws, articles of incorporation, partnership agreement, charter, statute or other document which would restrict the applicant in advancing an educational program or complying with any Commission rule, policy or provision of the Communications Act of 1934, as amended?

☐ Yes ☐ No

If Yes, provide particulars in an Exhibit.

Exhibit No. _____

CITIZENSHIP AND OTHER STATUTORY REQUIREMENTS

6. (a) Is the applicant in violation of the provisions of Section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments? (See Instruction B to Section II.)

☐ Yes ☐ No

(b) Will any funds, credits or other financial assistance for the construction, purchase or operation of the station(s) be provided by aliens, foreign entities, domestic entities controlled by aliens, or their agents?

☐ Yes ☐ No

If the answer to (b) above is Yes, attach an Exhibit giving full disclosure concerning this assistance.

Exhibit No. _____

7. (a) Has an adverse finding been made or an adverse final action taken by any court or administrative body as to the applicant or any party to this application in a civil or criminal proceeding brought under the provisions of any law related to the following:

Any felony; broadcast related antitrust or unfair competition; criminal fraud or fraud before another governmental unit; or discrimination?

☐ Yes ☐ No

(b) Is there now pending in any court or administrative body any proceeding involving any of the matters referred to in (a) above?

☐ Yes ☐ No

If the answer to (a) and/or (b) above is Yes, attach an Exhibit giving full disclosure concerning persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers), a statement of the facts upon which the proceeding is or was based or the nature of the offense alleged or committed, and a description of the current status or disposition of the matter.

Exhibit No. _____

PARTIES TO APPLICATION

8. Complete the following Table with respect to all parties to this application:

(NOTE: If the applicant considers that to furnish complete information would pose an unreasonable burden, it may request that the Commission waive the strict terms of this requirement with appropriate justification.)

INSTRUCTIONS: If applicant is a corporation or an unincorporated association with 50 or fewer stockholders, stock subscribers, holders of membership certificate or other ownership interest, fill out all columns, giving the information requested as to all officers, directors and members of governing board. In addition, give the information as to all persons or entities who are the beneficial or record owners of or have the right to vote capital stock, membership or ownership interests or are subscribers to such interests. If the applicant has more than 50 stockholders, stock subscribers or holders of membership certificates or other ownership interests, furnish the information as to officers, directors, members of governing board, and all persons or entities who are the beneficial or record owners of or have the right to vote 1% or more of the capital stock, membership or ownership interests. If applicant is a governmental or public educational agency, board or institution, fill out columns (a), (b), and (c) as to all members of the governing board and chief executive officers.

Name and Residence Address(es) (a)	Office Held (b)	Director or Member of Governing Board		% of: Ownership (O) or Voting Stock (VS) or Membership (M) (d)
		YES	NO	
		(c)		